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IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

WILLIAM KORNFELD, JR.,  
Individually and On Behalf of All  
Others Similarly Situated,

Plaintiff,

v.

ROBERT K. COLE, PATTI M.  
DODGE, BRAD A. MORRICE,  
EDWARD F. GOTSCHALL,  
HAROLD A. BLACK, FREDRIC J.  
FORSTER, DONALD E. LANGE,  
WILLIAM J. POPEJOY, MICHAEL  
M. SACHS, RICHARD A. ZONA,  
MARILYN A. ALEXANDER, DAVID  
EINHORN and NEW CENTURY  
FINANCIAL CORPORATION,

Defendants.

Case No. SACV07-391 AG(ANx)

CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF FEDERAL  
SECURITIES LAWS

JURY TRIAL DEMANDED

## INTRODUCTION

This is a federal class action on behalf of purchasers of New Century Financial Corp. ("New Century" or the "Company") Series A Preferred shares and/or Series B Preferred shares, in connection with the Company's June 2005 and/or August 2006 Preferred Share Offerings (collectively, the "Offerings"), seeking to pursue remedies under the Securities Act of 1933 (the "Securities Act"). As alleged herein, in connection with the June 2005 Series A Preferred Share Offering and the August 2006 Series B Preferred Share Offering, Defendants issued joint Proxy-Prospectus and Registration Statements that each contained and incorporated materially false and misleading statements, and omitted to reveal material information necessary to make Defendants' statements, in light of such material omissions, not materially false and misleading.

## OVERVIEW

1. Co-founded by Robert Cole, Brad Morrice and Edward Gotschall in 1995, New Century now purports to operate as a real estate investment trust in the United States, originating and purchasing mortgage loans. As of December 31, 2005, the Company had 35 regional operating centers located in 18 states and originated and purchased loans through its network of 47,000 mortgage brokers, as well as operated a central retail telemarketing unit, 2 regional processing centers, and 222 sales offices.

2. As a result of the remarkable growth in the Company and its loan origination and servicing business, at all relevant times, New Century needed access to huge amounts of cash and debt (i.e. liquidity) to support its massive lending operations. In fact, as New Century continued to increase its loan volumes, it needed more and more cash to pay overhead and to reserve for loan losses. One way that Defendants were able raise these funds was through the sale of Preferred shares in public Offerings. In fact, in June 2005 and in August 2006, Defendants sold over \$178 million in Series A and Series B Preferred shares, combined -

1 \$120.75 million sold in June 2005 and \$57.5 million sold in August 2006.

2 3. To effectuate these sales, at the time of these Preferred Share  
3 Offerings, Defendants repeatedly stated that New Century was achieving strong  
4 results, that the Company was operating according to plan, and that New Century  
5 maintained adequate accounting controls and procedures and, accordingly, the  
6 Company was adequately reserved to meet its present and expected loan losses.  
7 Statements to this effect were contained in the joint Proxy-Prospectus and  
8 Registration Statements issued in connection with each of these Preferred Share  
9 Offerings, and also contained in the Company's 2004 and 2005 Form(s) 10-K and  
10 its 1Q:06 and 2Q:06 Form(s) 10-Q, incorporated by reference therein.

11 4. Throughout the relevant period, Defendants also repeatedly stated that  
12 New Century had *already* made all necessary adjustments to the Company's  
13 financial statements and balance sheet, and that New Century's reserves were  
14 periodically reviewed and adjusted, and had been determined to be sufficient.  
15 However, the representations concerning the Company's systems and controls, and  
16 Defendants' statements concerning New Century's financial condition, loan reserves  
17 and GAAP compliance were patently untrue.

18 5. Unbeknownst to investors, at the time of the June 2005 and August  
19 2006 Preferred Share Offerings, New Century was suffering from a host of  
20 undisclosed adverse factors which were negatively impacting its business and that  
21 would foreseeably cause it to report declining financial results – materially less than  
22 the market expectations Defendants had caused and cultivated. In particular, at the  
23 time of the Series A and Series B Preferred Share Offerings:

- 24 • It was not true that the Company maintained necessary and  
25 proper internal financial controls and operational procedures so as to  
26 assure that New Century's financial results were true, accurate or  
27 reliable, or reported in conformity with Generally Accepted Accounting  
28 Principles. In fact, at all relevant times, the Company's reported results

1 were *not* true and accurate, and they did *not* contain all necessary  
2 adjustments and loan loss reserves or reflect the true financial or  
3 operational condition of New Century.

4 • As a result of the Company's lack of internal operational  
5 procedures and financial controls, and as a result of Defendants' failure  
6 to properly account for its allowances for loan losses and/or loan  
7 repurchases, at the time of the Series A and Series B Preferred Share  
8 Offerings, New Century's financial results were *not* true or accurate,  
9 and they were *not* prepared in conformity with GAAP or SEC  
10 accounting rules.

11 • At the time of the Series A and Series B Preferred Share  
12 Offerings, Defendants had presented a financial statement and balance  
13 sheet that materially overstated the Company's profitability by under-  
14 reporting reserves, by over-reporting New Century's asset values, and  
15 by failing to make proper, timely adjustments to the Company's  
16 operational and financial reports.

17 • As a result of the aforementioned adverse conditions that  
18 Defendants failed to disclose, at the time of the Series A and Series B  
19 Preferred Share Offerings, Defendants lacked any reasonable basis to  
20 claim that the Company was operating according to plan, or that New  
21 Century could achieve guidance sponsored and/or endorsed by  
22 Defendants.

23 6. It was only beginning on February 7, 2007, that investors ultimately  
24 learned the truth about New Century after Defendants revealed that *the Company's*  
25 *previously filed financial statements for the first three quarters of 2006 could not be*  
26 *relied upon*, and that New Century would be forced to restate that period, at a  
27 minimum. In addition to the foregoing, at that time Defendants *also lowered*  
28 *forward guidance*.

1           7.     Following these belated disclosures, New Century Preferred shares  
2 declined precipitously – with Series B Preferred shares falling from just below  
3 \$25.00 per share on February 7, 2007 to a close of just above \$19.00 per share  
4 within two trading days, on February 12, 2006.

5           8.     On March 5, 2007, New Century's Preferred shares continued to fall  
6 after Standard & Poor's credit and debt rating agency cut its ratings on the Company  
7 to CCC rating – eight levels below investment grade levels – following reports of a  
8 *criminal investigation into the Company*. According to reports, the U.S. Attorney's

9 Office for the Central District of California is now conducting a federal criminal  
10 inquiry into trading in New Century securities as well as accounting errors.  
11 According to S&P, *"the investigation and the damage it might do to the Company's*  
12 *reputation create concern about New Century's ability to maintain its warehouse*  
13 *lending lines, which are necessary to fund mortgage originations."*

14           9.     Following the announcement, on March 2, 2007, of the U.S Attorney's  
15 investigation into the Company, when shares resumed trading on March 5, 2007,  
16 New Century's Preferred shares again declined precipitously – with Series B  
17 Preferred shares falling from \$19.15 per share on March 2, 2007 to a close of \$8.00  
18 per share the following trading day. Series A Preferred Shares also declined  
19 materially at or about the same time.

20           10.    In addition to the foregoing, on March 7, 2007, Defendants also  
21 revealed that New Century was operating well below analysts' expectations, that the  
22 Company could not support guidance and that, "as a result of its current constrained  
23 funding capacity" New Century had *ceased accepting loan applications from*  
24 *prospective borrowers* – effectively putting an end to the Company's lending  
25 activities indefinitely.

#### 26                                   JURISDICTION AND VENUE

27           11.    Jurisdiction is conferred by § 22 of the Securities Act of 1933 (the  
28 "Securities Act"), 15 U.S.C. § 77v. The claims asserted herein arise under §§ 11,



1 12(a)(2) and 15 of the Securities Act, §§ 77k and 77o, and rules promulgated  
2 thereunder by the Securities and Exchange Commission (the "SEC") [15 U.S.C.  
3 §§ 78j(b)].

4 12. Venue is proper in this District pursuant to § 22 of the Securities Act  
5 [15 U.S.C. § 78aa]. Defendant New Century maintains its principal place of  
6 business within this District, and/or the individual Defendants conduct business in,  
7 and many of the acts giving rise to the violations complained of herein took place in  
8 this District.

9 13. In connection with the acts alleged in this Complaint, Defendants,  
10 directly or indirectly, used the means and instrumentalities of interstate commerce  
11 including, but not limited to, the mails, interstate telephone communications and the  
12 facilities of the national securities markets.

13 **PARTIES**

14 14. Plaintiff William Kornfeld, Jr., as set forth in the accompanying  
15 certification, incorporated by reference herein, purchased New Century Series A and  
16 B Preferred stock in connection with and/or traceable to the Series A and B  
17 Preferred Share Offerings, at artificially inflated prices during the Class Period and  
18 has been damaged thereby.

19 **Corporate Defendant**

20 15. Defendant New Century is a Maryland corporation with its principal  
21 place of business and chief executive offices located at 18400 Von Karman, Irvine,  
22 CA 92612. Co-founded by Robert Cole, Brad Morrice and Edward Gotschall in  
23 1995, New Century purports to operate as a real estate investment trust in the United  
24 States, originating and purchasing mortgage loans. The Company's Wholesale  
25 division provides loans through a network of independent mortgage brokers and  
26 correspondent lenders, and through its website. The Company's Retail division  
27 operates and originates loans through a consumer-direct channel and a  
28 builder/realtor channel, including radio, direct mail, telemarketing, television

1 advertising, and the Internet. As of December 31, 2005, the Company had 35  
2 regional operating centers located in 18 states and originated and purchased loans  
3 through its network of 47,000 mortgage brokers, as well as operated a central retail  
4 telemarketing unit, 2 regional processing centers, and 222 sales offices. New  
5 Century Financial Corporation qualifies as a REIT under the Internal Revenue Code.  
6 As a REIT, it is not subject to federal income tax to the extent it distributes 90% of  
7 taxable income to its shareholders.

8 **Individual Defendants**

9 16. Defendant Robert K. Cole ("Cole") was at the time of the June 2005  
10 Series A Preferred Share Offering and/or the August 2006 Series B Preferred Share  
11 Offering, Chairman of the Board of Directors and Chief Executive Officer, and was  
12 a co-Founder of the Company.<sup>1</sup> Defendant Cole prepared and/or assisted in the  
13 preparation of the materially false and misleading Prospectus issued in connection  
14 with the June 2005 Series A Preferred Share Offering and the August 2006 Series B  
15 Preferred Stock Offering. Defendant Cole also signed and certified the Company's  
16 SEC filings, including but not limited to New Century's Form(s) 10-Q and Form(s)  
17 10-K incorporated by reference into each joint Proxy/Prospectus issued in  
18 connection with the Series A and Series B Preferred Share Offerings.

19 17. Defendant Patti M. Dodge ("Dodge") was at the time of the June 2005  
20 Series A Preferred Share Offering and August 2006 Series B Preferred Share  
21 Offering, Chief Financial Officer, Principal Financial Officer and Executive Vice  
22 President of the Company.<sup>2</sup> Defendant Dodge prepared and/or assisted in the  
23

24 <sup>1</sup> Defendant Cole was replaced as CEO on 7/1/06, but remained as Chairman of the  
25 Board of Directors of the Company until 1/1/07, and currently remains a member of  
26 the Board.

27 <sup>2</sup> Soon after the Series B Preferred Share Offering, on 11/11/06, defendant Dodge  
28 was removed from the position of CFO and relegated to lead New Century's  
Investor Relations department.

1 preparation of the materially false and misleading Prospectus issued in connection  
2 with the June 2005 Series A Preferred Share Offering and the August 2006 Series B  
3 Preferred Stock Offering. Defendant Dodge also signed and certified the  
4 Company's SEC filings, including but not limited to New Century's Form(s) 10-Q  
5 and Form(s) 10-K incorporated by reference into each joint Proxy/Prospectus issued  
6 in connection with the Series A and Series B Preferred Share Offerings.

7 18. Defendant Brad A. Morrice ("Morrice") was at the time of the June  
8 2005 Series A Preferred Share Offering and August 2006 Series B Preferred Share  
9 Offering, Vice Chairman, President and Chief Operating Officer as well as a founder  
10 of the Company.<sup>3</sup> Defendant Morrice prepared and/or assisted in the preparation of  
11 the materially false and misleading Prospectus issued in connection with the June  
12 2005 Series A Preferred Share Offering and the August 2006 Series B Preferred  
13 Stock Offering. Defendant Morrice also prepared and/or assisted in the preparation  
14 of the Company's SEC filings, including but not limited to New Century's Form(s)  
15 10-Q and Form(s) 10-K incorporated by reference into each joint Proxy/Prospectus  
16 issued in connection with the Series A and Series B Preferred Share Offerings.

17 19. Defendant Edward F. Gotschall ("Gotschall") was at the time of the  
18 June 2005 Series A Preferred Share Offering and August 2006 Series B Preferred  
19 Share Offering, Vice Chairman (Finance) of the Board of Directors and a co-founder  
20 of the Company. Defendant Gotschall prepared and/or assisted in the preparation of  
21 the materially false and misleading Prospectus issued in connection with the June  
22 2005 Series A Preferred Share Offering and the August 2006 Series B Preferred  
23 Stock Offering. Defendant Gotschall also prepared and/or assisted in the  
24 preparation of the Company's SEC filings, including but not limited to New  
25 Century's Form(s) 10-Q and Form(s) 10-K incorporated by reference into each joint  
26

27 <sup>3</sup> In addition, on 7/1/06 defendant Morrice was also appointed CEO of New  
28 Century.



1 Proxy/Prospectus issued in connection with the Series A and Series B Preferred  
2 Share Offerings.

3       20. Defendant Harold A. Black ("Black") was at the time of the June 2005  
4 Series A Preferred Share Offering and August 2006 Series B Preferred Share  
5 Offering, a director of the Company. Defendant Black prepared and/or assisted in  
6 the preparation of the materially false and misleading Prospectus issued in  
7 connection with the June 2005 Series A Preferred Share Offering and the August  
8 2006 Series B Preferred Stock Offering. Defendant Black also prepared and/or  
9 assisted in the preparation of the Company's SEC filings, including but not limited  
10 to New Century's Form(s) 10-Q and Form(s) 10-K incorporated by reference into  
11 each joint Proxy/Prospectus issued in connection with the Series A and Series B  
12 Preferred Share Offerings.

13       21. Defendant Fredric J. Forster ("Forster") was at the time of the June  
14 2005 Series A Preferred Share Offering and August 2006 Series B Preferred Share  
15 Offering, a director of the Company – becoming Lead Director on or about 9/20/05.  
16 Defendant Forster prepared and/or assisted in the preparation of the materially false  
17 and misleading Prospectus issued in connection with the June 2005 Series A  
18 Preferred Share Offering and the August 2006 Series B Preferred Stock Offering.  
19 Defendant Forster also prepared and/or assisted in the preparation of the Company's  
20 SEC filings, including but not limited to New Century's Form(s) 10-Q and Form(s)  
21 10-K, incorporated by reference into each joint Proxy/Prospectus issued in  
22 connection with the Series A and Series B Preferred Share Offerings. In addition to  
23 the foregoing, at the time of the June 2005 Series A Preferred Share Offering,  
24 Defendants Forster, Lange, Sachs and Zona were members of the Audit Committee.

25       22. Defendant Donald E. Lange ("Lange") was at the time of the June  
26 2005 Series A Preferred Share Offering and August 2006 Series B Preferred Share  
27 Offering, a director of the Company. Defendant Lange prepared and/or assisted in  
28 the preparation of the materially false and misleading Prospectus issued in

1 connection with the June 2005 Series A Preferred Share Offering and the August  
2 2006 Series B Preferred Stock Offering. Defendant Lange also prepared and/or  
3 assisted in the preparation of the Company's SEC filings, including but not limited  
4 to New Century's Form(s) 10-Q and Form(s) 10-K, incorporated by reference into  
5 each joint Proxy/Prospectus issued in connection with the Series A and Series B  
6 Preferred Share Offerings. In addition to the foregoing, at the time of the June 2005  
7 Series A Preferred Share Offering, Defendants Lange, Forster, Sachs and Zona were  
8 members of the Audit Committee and Defendants Sachs served as Chairman of our  
9 Audit Committee.

10 23. Defendant William J. Popejoy ("Popejoy") was at the time of the June  
11 2005 Series A Preferred Share Offering, an Officer of the Company, having served  
12 as Chief Information Officer and Executive Vice President for New Century.<sup>4</sup>  
13 Defendant Popejoy prepared and/or assisted in the preparation of the materially false  
14 and misleading Prospectus issued in connection with the June 2005 Series A  
15 Preferred Share Offering and the August 2006 Series B Preferred Stock Offering.  
16 Defendant Popejoy also prepared and/or assisted in the preparation of the  
17 Company's SEC filings, including but not limited to New Century's Form(s) 10-Q  
18 and Form(s) 10-K, incorporated by reference into each joint Proxy/Prospectus issued  
19 in connection with the Series A and Series B Preferred Share Offerings.

20 24. Defendant Michael M. Sachs ("Sachs") was at the time of the June  
21 2005 Series A Preferred Share Offering and August 2006 Series B Preferred Share  
22 Offering, a director of the Company. Defendant Sachs prepared and/or assisted in  
23 the preparation of the materially false and misleading Prospectus issued in  
24 connection with the June 2005 Series A Preferred Share Offering and the August  
25 2006 Series B Preferred Stock Offering. Defendant Sachs also prepared and/or  
26

27 <sup>4</sup> Defendant Popejoy retired on or about June 5, 2006 – immediately prior to the  
28 August 2006 Series B Preferred Share Offering.

1 assisted in the preparation of the Company's SEC filings, including but not limited  
2 to New Century's Form(s) 10-Q and Form(s) 10-K, incorporated by reference into  
3 each joint Proxy/Prospectus issued in connection with the Series A and Series B  
4 Preferred Share Offerings. In addition to the foregoing, at the time of the June 2005  
5 Series A Preferred Share Offering, defendant Sachs served as Chairman of the  
6 Company's Audit Committee and Defendants Lange, Forster and Sachs served as  
7 members of this Committee.

8 25. Defendant Richard A. Zona ("Zona") was at the time of the June 2005  
9 Series A Preferred Share Offering and August 2006 Series B Preferred Share  
10 Offering, an Officer of the Company, having served as Chief Information Officer  
11 and Executive Vice President for New Century. Defendant Zona prepared and/or  
12 assisted in the preparation of the materially false and misleading Prospectus issued  
13 in connection with the June 2005 Series A Preferred Share Offering and the August  
14 2006 Series B Preferred Stock Offering. Defendant Zona also prepared and/or  
15 assisted in the preparation of the Company's SEC filings, including but not limited  
16 to New Century's Form(s) 10-Q and Form(s) 10-K, incorporated by reference into  
17 each joint Proxy/Prospectus issued in connection with the Series A and Series B  
18 Preferred Share Offerings. In addition to the foregoing, at the time of the June 2005  
19 Series A Preferred Share Offering, Defendants Zona, Lange, Forster and Sachs were  
20 members of the Audit Committee.

21 26. Defendant Marilyn A. Alexander ("Alexander") was at the time of the  
22 June 2005 Series A and August 2006 Series B Preferred Share Offerings, a director  
23 of the Company. Defendant Alexander prepared and/or assisted in the preparation  
24 of the materially false and misleading Prospectus issued in Connection with the June  
25 2005 Series A and August 2006 Series B Preferred Stock Offerings. Defendant  
26 Alexander also prepared and/or assisted in the preparation of the Company's SEC  
27 filings, including but not limited to New Century's Form(s) 10-Q and Form 10-K,  
28 incorporated by reference into each joint Proxy/Prospectus issued in connection with

1 the June 2005 and August 2006 Series A and B Preferred Share Offerings.

2 27. Defendant David Einhorn ("Einhorn") was at the time of the August  
3 2006 Series B Preferred Share Offering, a director of the Company, having joined  
4 the Board on or about March 31, 2006.<sup>5</sup> Defendant Einhorn prepared and/or assisted  
5 in the preparation of the materially false and misleading Prospectus issued in  
6 Connection with the August 2006 Series B Preferred Stock Offering. Defendant  
7 Einhorn also prepared and/or assisted in the preparation of the Company's SEC  
8 filings, including but not limited to New Century's Form(s) 10-Q and Form 10-K,  
9 incorporated by reference into each joint Proxy/Prospectus issued in connection with  
10 the August 2006 Series B Preferred Share Offering.

11 28. The Defendants referenced above in ¶¶ 16-27 are referred to herein as  
12 the "Individual Defendants."

### 13 IPO Underwriter Defendants

14 29. In connection with the June 2005 Public Offering, the following  
15 investment banks acted as "Lead Underwriters" of the Offering – distributing 4.2  
16 million Preferred shares of New Century stock to investors and initiating the first  
17 public market for New Century Series A Preferred shares. Not including another  
18 630,000 Series A Preferred shares distributed upon exercise of the underwriters'  
19 over-subscription allotment option, the distribution of the Series A Preferred shares  
20 awarded Underwriters occurred, as follows:

Underwriters	Number of Shares
Bear, Stearns & Co. Inc	2,184,000
Deutsche Bank Securities Inc.	588,000
Piper Jaffray & Co.	588,000
Stifel, Nicolaus & Company, Incorporated	588,000

27 <sup>5</sup> Defendant Einhorn resigned from the Company's Board of Directors, effective  
28 immediately as of March 7, 2007.

	Underwriters	Number of Shares
1		
2	JMP Securities LLC	126,000
3	Roth Capital Partners, LLC	126,000
4		
5	Total Series A Preferred Shares Sold	4,200,000

30. In connection with the June 2005 Series A Preferred Share Offering, the Underwriter Defendants were paid approximately \$3.8 million in fees – paid indirectly by purchasers of the Company’s shares. The Underwriter Defendants were paid at least \$0.7875 per share in connection with the sale of the 4.83 million Series A Preferred shares, including shares sold pursuant to the exercise of the Underwriter’s over-subscription option, as follows:

		Total	
	Per Share	Without OverAllotment	With OverAllotment
Underwriting discounts and commissions payable	\$0.7875	\$ 3,307,500	\$ 3,803,625

31. In addition to the foregoing, in connection with the August 2006 Series B Public Share Offering, the following investment banks also acted as “Lead Underwriters” – distributing 2.0 million Series B Preferred New Century shares to investors and initiating the first public market for New Century Series B Preferred stock. Not including another 300,000 Series B Preferred shares distributed upon exercise of the underwriters’ over-subscription allotment option, the distribution of the Series B Preferred shares awarded Underwriters occurred, as follows:



Underwriters	Number of Shares
Bear, Stearns & Co. Inc.	750,000
Morgan Stanley & Co. Incorporated	750,000
Stifel, Nicolaus & Company, Incorporated	380,000
Jefferies & Company, Inc.	120,000
Total Series B Preferred Shares Sold	2,000,000

32. In connection with the August 2006 Series B Preferred Share Offering, the Underwriter Defendants were paid over \$1.81 million in fees, indirectly paid by purchasers of the Company's shares. The Underwriter Defendants were paid at least \$0.7875 per share in connection with the sale of the 2.3 million Series B Preferred shares, including shares sold pursuant to the exercise of the Underwriter's over-subscription option, as follows:

		Total	
	Per Share	Without Overallotment	With Overallotment
Underwriting discounts and commissions payable	\$0.7875	\$1,575,000	\$1,811,250

33. Shareholders were willing to, and did, pay over \$5.6 million in combined fees to compensate the Underwriter Defendants for conducting purported significant due diligence investigations into New Century in connection with each of the Preferred Share Offerings. The Underwriter Defendants due diligence investigation was a critical component of the initial public Preferred Share Offerings, and it was supposed to provide investors with important safeguards and protections.

34. The due diligence investigations that were required by the Underwriter Defendants included a detailed investigation into New Century's accounting and loan loss reserve assumptions that extended well beyond a mere casual review of

1 New Century's accounting, financial report and operational and financial controls.  
2 The failure of the Underwriter Defendants to conduct an adequate due diligence  
3 investigation was a substantial contributing factor leading to the harm complained of  
4 herein.

5 35. In addition to the foregoing, because of the Underwriter Defendants'  
6 and Individual Defendants' positions with the Company, they each had access to the  
7 adverse undisclosed information about New Century's business, operations,  
8 products, operational trends, financial statements, markets and present and future  
9 business prospects via access to internal corporate documents (including the  
10 Company's operating plans, budgets and forecasts and reports of actual operations  
11 compared thereto), conversations and connections with other corporate officers and  
12 employees, attendance at management and Board of Directors meetings and  
13 committees thereof and via reports and other information provided to them in  
14 connection therewith.

15 36. In addition to the Underwriting Defendants, it is also appropriate to  
16 treat the individuals named as Defendants herein as a group for pleading purposes  
17 (the "Individual Defendants") and to presume that the false, misleading and  
18 incomplete information conveyed in the Company's public filings, press releases  
19 and other publications as alleged herein are the collective actions of the narrowly  
20 defined group of Defendants identified above. Each of the Individual Defendants,  
21 by virtue of their high-level positions with the Company, directly participated in the  
22 management of the Company, were directly involved in the day-to-day operations of  
23 the Company at the highest levels and were privy to confidential proprietary  
24 information concerning the Company and its business, operations, products, growth,  
25 financial statements, and financial condition, as alleged herein. Accordingly, the  
26 Individual Defendants were also involved in drafting, producing, reviewing and/or  
27 disseminating the false and misleading statements and information alleged herein,  
28 and approved or ratified these statements, in violation of the federal securities laws.

1           37. As officers and controlling persons of a publicly-held company whose  
2 common stock was, and is, registered with the SEC pursuant to the Exchange Act,  
3 was traded on the New York Stock Exchange (the "NYSE"), and governed by the  
4 provisions of the federal securities laws, the Individual Defendants each had a duty  
5 to disseminate promptly, accurate and truthful information with respect to the  
6 Company's financial condition and performance, growth, operations, financial  
7 statements, business, products, markets, management, earnings and present and  
8 future business prospects, and to correct any previously-issued statements that had  
9 become materially misleading or untrue, so that the market price of the Company's  
10 publicly-traded common stock would be based upon truthful and accurate  
11 information. The Individual Defendants' misrepresentations and omissions made in  
12 connection with the issuance of Series A and Series B Preferred shares in June 2005  
13 and August 2006, respectively, violated these specific requirements and obligations.

14           38. The Individual Defendants, because of their positions of control and  
15 authority as officers and/or directors of the Company, were able to and did control  
16 the content of the various SEC filings, press releases and other public statements  
17 pertaining to the Company during the Class Period. Each Individual Defendant was  
18 provided with copies of the documents alleged herein to be misleading prior to or  
19 shortly after their issuance and/or had the ability and/or opportunity to prevent their  
20 issuance or cause them to be corrected. Accordingly, each of the Individual  
21 Defendants is responsible for the accuracy of the public reports and releases detailed  
22 herein, and is therefore primarily liable for the representations contained therein.

23                   **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

24           39. Plaintiff brings this action as a class action pursuant to Federal Rule of  
25 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who  
26 purchased or otherwise acquired the Preferred Series A or Series B stock of New  
27 Century in connection with and/or traceable to the June 2005 and August 2006  
28 public offerings, inclusive (the "Class") and who were damaged thereby. Excluded

1 from the Class are Defendants, the officers and directors of the Company, at all  
2 relevant times, members of their immediate families and their legal representatives,  
3 heirs, successors or assigns and any entity in which Defendants have or had a  
4 controlling interest.

5 40. The members of the Class are so numerous that joinder of all members  
6 is impracticable. Following the June 2005 Offering, New Century preferred shares  
7 were actively traded on the NYSE, and following the August 2006 Preferred Share  
8 Offering, the Company had over 7.13 million shares of Series A and Series B  
9 Preferred stock, collectively, issued and outstanding. While the exact number of  
10 Class members is unknown to plaintiff at this time and can only be ascertained  
11 through appropriate discovery, plaintiff believes that there are hundreds or  
12 thousands of members in the proposed Class. Record owners and other members of  
13 the Class may be identified from records maintained by New Century or its transfer  
14 agent, and may be notified of the pendency of this action by mail, using the form of  
15 notice similar to that customarily used in securities class actions.

16 41. Plaintiff's claims are typical of the claims of the members of the Class  
17 as all members of the Class are similarly affected by Defendants' wrongful conduct  
18 in violation of federal law that is complained of herein.

19 42. Plaintiff will fairly and adequately protect the interests of the members  
20 of the Class and has retained counsel competent and experienced in class and  
21 securities litigation.

22 43. Common questions of law and fact exist as to all members of the Class  
23 and predominate over any questions solely affecting individual members of the  
24 Class. Among the questions of law and fact common to the Class are:

25 (a) whether the federal securities laws were violated by Defendants'  
26 acts as alleged herein;

27 (b) whether statements made by Defendants to the investing public  
28 during the Class Period misrepresented material facts about the business, operations

1 and management of New Century; and

2 (c) to what extent the members of the Class have sustained damages  
3 and the proper measure of damages.

4 44. A class action is superior to all other available methods for the fair and  
5 efficient adjudication of this controversy since joinder of all members is  
6 impracticable. Furthermore, as the damages suffered by individual Class members  
7 may be relatively small, the expense and burden of individual litigation makes it  
8 impossible for members of the Class to individually redress the wrongs done to  
9 them. There will be no difficulty in the management of this action as a Class action.

#### 10 SUBSTANTIVE ALLEGATIONS

##### 11 Materially False and Misleading Statements Contained in the 12 Preferred Share Offering Statements

##### 13 June 2005 Series A Preferred Share Offering

14 45. On or about June 15, 2005, New Century initiated its Public Offering  
15 of 4.2 million shares of Series A Preferred stock priced at \$25.00 each. In addition,  
16 Underwriters also received an option to purchase up to an additional 630,000 Series  
17 A Preferred shares to cover any over-allotments. Thereafter, New Century Series A  
18 Preferred shares were listed, and began trading on the NYSE.

19 46. The New Century Series A Preferred Share Offering was made  
20 through an underwriting syndicate led by Bear, Stearns & Co. Inc, who acted as sole  
21 "book-running lead manager" for the Offering, and including Deutsche Bank  
22 Securities Inc., Piper Jaffray & Co., Stifel, Nicolaus & Company, Inc., JMP  
23 Securities LLC and Roth Capital Partners, LLC, who each acted as "co-managers."  
24 In connection with the Series A Preferred Share Offering, these Underwriters  
25 received gross proceeds of at least \$3.8 million, not including hundreds of thousands  
26 of dollars in added expenses. Gross proceeds from the sale of all Series A Preferred  
27 shares, including the Underwriters over-subscription option, were at least \$120.75  
28 million.



1           47. In connection with the Series A Preferred Share Offering, on or about  
2 June 17, 2005, Defendants also filed with the SEC, pursuant to Form 424B5, a copy  
3 of the final, amended joint Proxy-Prospectus. In addition to describing the terms  
4 and conditions of the Preferred Share Offering itself, the Series A Preferred Share  
5 Offering Proxy-Prospectus contained statements that distinguished these shares from  
6 shares of the Company's Common Stock. In this regard, the Series A Preferred  
7 Share Offering Prospectus stated, in part, the following:

8           **Liquidation Preference**

9           Upon our voluntary or involuntary liquidation, dissolution or winding  
10 up, then, *before any distribution or payment shall be made to the*  
11 *holders of any common stock or any other class or series of our stock*  
12 *ranking junior to that class or series of our preferred stock in the*  
13 *distribution of assets upon our liquidation, dissolution or winding up,*  
14 *the holders of each class or series of our preferred stock shall be*  
15 *entitled to receive out of our assets legally available for distribution to*  
16 *stockholders liquidating distributions in the amount of the liquidation*  
17 *preference per share (set forth in the applicable prospectus*  
18 *supplement), plus an amount equal to all dividends accrued and unpaid*  
19 *thereon (which shall not include any accumulation in respect of unpaid*  
20 *dividends for prior dividend periods if that class or series of our*  
21 *preferred stock does not have a cumulative dividend). After payment of*  
22 *the full amount of the liquidating distributions to which they are*  
23 *entitled, the holders of that class or series of our preferred stock will*  
24 *have no right or claim to any of our remaining assets. If, upon our*  
25 *voluntary or involuntary liquidation, dissolution or winding up, our*  
26 *legally available assets are insufficient to pay the amount of the*  
27 *liquidating distributions on all outstanding shares of that class or series*  
28 *of our preferred stock and the corresponding amounts payable on all*

1 shares of other classes or series of our stock ranking on a parity with  
2 that class or series of our preferred stock in the distribution of assets  
3 upon our liquidation, dissolution or winding up, *then the holders of that*  
4 *class or series of our preferred stock and all other classes or series of*  
5 *our stock shall share ratably in that distribution of assets in proportion*  
6 *to the full liquidating distributions to which they would otherwise be*  
7 *respectively entitled.*

8  
9 If liquidating distributions shall have been made in full to all holders of  
10 shares of that class or series of our preferred stock, *our remaining*  
11 *assets shall be distributed among the holders of any other classes or*  
12 *series of our stock ranking junior to that class or series of our*  
13 *preferred stock upon our liquidation, dissolution or winding up,*  
14 *according to their respective rights and preferences and in each case*  
15 *according to their respective number of shares. For those purposes,*  
16 *neither our consolidation nor merger with or into any other corporation,*  
17 *trust or other entity nor the sale, lease, transfer or conveyance of all or*  
18 *substantially all of our property or business shall be deemed to*  
19 *constitute our liquidation, dissolution or winding up.*

#### 20 21 **Voting Rights**

22 Except as set forth below or as otherwise indicated in the applicable  
23 prospectus supplement, *holders of our preferred stock will not have any*  
24 *voting rights.*

25  
26 *Whenever dividends on any shares of that class or series of our*  
27 *preferred stock shall be in arrears for 18 months or six or more*  
28 *quarterly periods, the holders of those shares of that class or series of*

1     *our preferred stock* (voting separately as a class with all other classes or  
2     series of our preferred stock ranking on parity with such class or series  
3     of our preferred stock upon which like voting rights have been  
4     conferred and are exercisable) *will be entitled to vote for the election of*  
5     *two additional directors to our board of directors* (and our entire board  
6     of directors will be increased by two directors) at a special meeting  
7     called by one of our officers at the request of a holder of that class or  
8     series of our preferred stock or, if that special meeting is not called by  
9     that officer within 30 days, at a special meeting called by a holder of  
10    that class or series of our preferred stock designated by the holders of  
11    record of at least 10% of the shares of any of those classes or series of  
12    our preferred stock (unless that request is received less than 90 days  
13    before the date fixed for the next annual or special meeting of the  
14    stockholders), or at the next annual meeting of stockholders, and at  
15    each subsequent annual meeting until:

- 16  
17       •     if that class or series of our preferred stock has a cumulative  
18       dividend, then all dividends accumulated on those shares of our  
19       preferred stock for the past dividend periods and the then current  
20       dividend period shall have been fully paid or declared and a sum  
21       sufficient for the payment thereof set apart for payment, or  
22
- 23       •     if that class or series of our preferred stock does not have a  
24       cumulative dividend, then four consecutive quarterly periods of  
25       dividends shall have been fully paid or declared and a sum  
26       sufficient for the payment thereof set apart for payment.

27  
28     Unless provided otherwise in any prospectus supplements for any

1 series of our preferred stock, so long as any shares of our preferred  
2 stock remain outstanding, *we shall not, without the affirmative vote or*  
3 *consent of the holders of at least two-thirds of the shares of each class*  
4 *or series of our preferred stock outstanding at the time, given in person*  
5 *or by proxy, either in writing or at a meeting (that class or series voting*  
6 *separately as a class):*

7  
8 • *authorize or create, or increase the authorized or issued*  
9 *amount of, any class or series of our stock ranking senior to that*  
10 *class or series of our preferred stock with respect to payment of*  
11 *dividends or the distribution of assets upon our liquidation,*  
12 *dissolution or winding up or reclassify any of our authorized*  
13 *stock into those shares, or create, authorize or issue any*  
14 *obligation or security convertible into or evidencing the right to*  
15 *purchase those shares; or*

16  
17 • *amend, alter or repeal the provisions of the charter in*  
18 *respect of that class or series of our preferred stock, whether by*  
19 *merger, consolidation or otherwise, so as to materially and*  
20 *adversely affect any right, preference, privilege or voting power*  
21 *of that class or series of our preferred stock...*

22 48. The Series A Preferred Share Offering Prospectus also contained  
23 statements regarding New Century's controls and procedures, its purported loan loss  
24 reserve and accounting and its estimating practices. In this regard the Series A  
25 Preferred Share Offering Prospectus also stated, in part, the following:

26 We have controls and processes designed to help us identify  
27 misrepresented information in our loan origination operations.

28 \* \* \*

1 We are required to establish reserves based on our anticipated  
2 delinquencies and losses. We also re-acquire the risks of delinquency  
3 and default for loans that we are obligated to repurchase. We attempt  
4 to manage these risks with risk-based loan pricing and appropriate  
5 underwriting policies and loan collection methods.

6 \* \* \*

7 We also re-acquire the risks of delinquency and default for loans that  
8 we are obligated to repurchase. We attempt to manage these risks with  
9 risk-based loan pricing and appropriate underwriting policies and loan  
10 collection methods.

11 49. The June 2005 Series A Preferred Share Proxy-Prospectus also  
12 incorporated by reference several of the Company's then recent SEC filings,  
13 including but not limited to New Century's 2004 Annual Report, filed pursuant to  
14 Form 10-K. In addition to reiterating many of the same or similar statements  
15 concerning the Company and its operations as had been made in the joint Offering  
16 Proxy-Prospectus, the 2005 Form 10-K also represented to investors that the  
17 Company's financial statements and disclosures were made in accordance with  
18 Generally Accepted Accounting Principles and that the Company's consolidated  
19 financial statements contained all necessary adjustments. In this regard, the Proxy-  
20 Prospectus stated, in part, the following:

21 **Critical Accounting Policies**

22 *We have established various accounting policies that govern the*  
23 *application of accounting principles generally accepted in the United*  
24 *States in the preparation of our financial statements. Certain*  
25 *accounting policies require us to make significant estimates and*  
26 *assumptions that may have a material impact on certain assets and*  
27 *liabilities or our results of operations, and we consider these to be*  
28 *critical accounting policies. The estimates and assumptions we use are*



1 *based on historical experience and other factors which we believe to be*  
2 *reasonable under the circumstances. Actual results could differ*  
3 *materially from these estimates and assumptions, which could have a*  
4 *material impact on the carrying value of assets and liabilities and our*  
5 *results of operations. We believe the following are critical accounting*  
6 *policies that require the most significant estimates and assumptions that*  
7 *are subject to significant change in the preparation of our consolidated*  
8 *financial statements. These estimates and assumptions include, but are*  
9 *not limited to, the interest rate environment, the economic environment,*  
10 *secondary market conditions, and the performance of the loans*  
11 *underlying our residual assets and mortgage loans held for investment.*

12 50. In addition to the general statements concerning the propriety of the  
13 Company's purported internal adjustments and GAAP compliance, the June 2005  
14 Series A Preferred Share Offering Proxy-Prospectus also contained specific  
15 representations regarding New Century's significant accounting policies – including  
16 its accounting for loan loss and loss reserves – as follows:

17 **Allowance for Losses on Mortgage Loans Held for Investment**

18 *For our mortgage loans held for investment, we establish an allowance*  
19 *for loan losses based on our estimate of losses inherent and probable*  
20 *as of the balance sheet date. We charge off uncollectible loans at the*  
21 *time of liquidation. We evaluate the adequacy of this allowance each*  
22 *quarter, giving consideration to factors such as the current*  
23 *performance of the loans, credit characteristics of the portfolio, the*  
24 *value of the underlying collateral and the general economic*  
25 *environment. In order to estimate an appropriate allowance for losses*  
26 *on loans held for investment, we estimate losses using "static pooling,"*  
27 *which stratifies the loans held for investment into separately identified*  
28 *vintage pools. Using historic experience and taking into consideration*

1 the factors above, we estimate an allowance for credit losses, which we  
2 believe is adequate for known and inherent losses in the portfolio of  
3 mortgage loans held for investment. We charge the loss provision to  
4 our consolidated statement of operations. *We charge losses incurred*  
5 *on mortgage loans held for investment to the allowance.*

6  
7 The allowance for losses on mortgage loans held for investment, as a  
8 percentage of mortgage loans held for investment as of December 31,  
9 2004, was approximately 0.73% of the unpaid principal balance of the  
10 loans.

11 \* \* \*

12 *Provision for losses on mortgage loans held for investment*

13 We establish an allowance for loan losses based on our estimate of  
14 losses inherent and probable as of our balance sheet date. Provision for  
15 losses on mortgage loans held for investment increased to \$70.3 million  
16 for the year ended December 31, 2004 from \$26.3 million for the same  
17 period in 2003, due to the increase in the portfolio of mortgage loans  
18 held for investment and related allowance for loan losses. Mortgage  
19 loans held for investment grew from \$4.7 billion at December 31, 2003  
20 to \$13.2 billion at December 31, 2004.

21 51. In addition to the foregoing, the Proxy-Prospectus also purported to  
22 provide more color on New Century's business and operations and stated, in part,  
23 the following:

24 Business Strategy

25 Our business objective is to provide a stable and growing dividend to  
26 our stockholders by growing and managing a portfolio of mortgage  
27 related assets. We intend to execute this strategy by:

1 • **Building our portfolio of mortgage-related assets.** We intend  
2 to increase our portfolio by retaining self-originated loans  
3 through securitizations structured as financings. We believe this  
4 portfolio will continue to increase our interest income and,  
5 accordingly, our dividend. We expect that our capacity to  
6 originate loans will provide us with a significant volume of  
7 loans at a lower cost and with greater reliability than if we  
8 purchased our portfolio from a third party.

9 • **Actively managing our mortgage loan portfolio.** We will  
10 seek to actively manage the interest rate and credit risks relating  
11 to holding a portfolio of mortgage-related assets in an effort to  
12 generate an attractive risk-adjusted return on our stockholders'  
13 equity. We will continue to use hedge instruments to attempt to  
14 reduce the interest rate exposure that results from financing  
15 fixed-rate assets with floating-rate liabilities. We will also  
16 actively monitor our portfolio to manage our credit exposure  
17 through early detection and management of probable  
18 delinquencies.

19 • **Maintaining a strong capital and liquidity base.** *We will seek*  
20 *to strengthen our balance sheet by managing prudent levels of*  
21 *capital and liquidity and by increasing our liquidity and capital*  
22 *position through future offerings of debt and equity.* We will  
23 also seek to increase available capacity under our credit facilities  
24 and to enhance our cash position by retaining some or all of our  
25 earnings in our taxable REIT subsidiaries. *We believe a strong*  
26 *balance sheet will allow us to more prudently manage our loan*  
27 *portfolio during temporary market disruptions.*  
28

1       **Underwriting Standards**

2       The loans we originate or purchase generally do not satisfy  
3       conventional underwriting standards of conforming lenders. Therefore,  
4       our loans are likely to have higher delinquency and foreclosure rates  
5       than portfolios of mortgage loans underwritten to conventional  
6       standards.

7  
8       *Our underwriting guidelines take into account the applicant's credit*  
9       *history and capacity to repay the proposed loan as well as the secured*  
10       *property's value and adequacy as collateral for the loan. Each*  
11       applicant completes an application that includes personal information  
12       on the applicant's liabilities, income, credit history and employment  
13       history. *Based on our review of the loan application and other data*  
14       *from the applicant against our underwriting guidelines, we determine*  
15       *the loan terms, including the interest rate and maximum LTV.*  
16       [Emphasis added.]

17       52. As further evidence of the purported controls and procedures in place  
18       at the time of the 2004 Form 10-K, incorporated by reference into the June 2005  
19       Series A Preferred Share Offering, the Proxy-Prospectus also stated, in part, the  
20       following:

21       **Collateral Review**

22       A qualified independent appraiser inspects and appraises each mortgage  
23       property and gives an opinion of value and condition. Following each  
24       appraisal, the appraiser prepares a report that includes a market value  
25       analysis based on recent sales of comparable homes in the area and,  
26       when appropriate, replacement cost analysis based on the current cost  
27       of constructing a similar home. All appraisals must conform to the  
28       Uniform Standards of Professional Appraisal Practice adopted by the

1 Appraisal Foundation's Appraisal Standards Board and are generally on  
2 forms acceptable to Fannie Mae and Freddie Mac. *Our underwriting*  
3 *guidelines require a review of the appraisal by one of our qualified*  
4 *employees or by a qualified review appraiser that we have retained.*  
5 *Our underwriting guidelines then require our underwriters to be*  
6 *satisfied that the value of the property being financed, as indicated by*  
7 *the appraisal, would support the requested loan amount.*

8 \* \* \*

9 **Item 9A. Controls and Procedures**

10 (a) Evaluation of Disclosure Controls and Procedures

11 *As of December 31, 2004, the end of our fourth quarter, our*  
12 *management, including our Chief Executive Officer, Vice Chairman-*  
13 *Finance, Chief Financial Officer, and President and Chief Operating*  
14 *Officer, has evaluated the effectiveness of our disclosure controls and*  
15 *procedures, as such term is defined in Rule 13a-15(e) promulgated*  
16 *under the Securities Exchange Act of 1934, as amended, or the*  
17 *Exchange Act. Based on that evaluation, our Chief Executive Officer,*  
18 *Vice Chairman-Finance, Chief Financial Officer, and President and*  
19 *Chief Operating Officer concluded, as of December 31, 2004, that our*  
20 *disclosure controls and procedures were effective to ensure that*  
21 *information required to be disclosed by us in reports that we file or*  
22 *submit under the Exchange Act is recorded, processed, summarized*  
23 *and reported within the time periods specified in the Securities and*  
24 *Exchange Commission rules and forms.*

25  
26 (b) Management's Report on Internal Control over Financial  
27 Reporting.

28 Our management is responsible for establishing and maintaining



1 effective internal control over financial reporting as defined in Rules  
2 13a-15(f) under the Securities Exchange Act of 1934. Our internal  
3 control over financial reporting is designed to provide reasonable  
4 assurance to our management and board of directors regarding the  
5 preparation and fair presentation of published financial statements, in  
6 accordance with generally accepted accounting principles.

7 \* \* \*

8 *Our management assessed the effectiveness of our internal control over*  
9 *financial reporting as of December 31, 2004.* In making this  
10 assessment, our management used the criteria set forth by the  
11 Committee of Sponsoring Organizations of the Treadway Commission  
12 (COSO) in Internal Control – Integrated Framework. Based on our  
13 assessment, management has concluded that, as of December 31, 2004,  
14 *our internal control over financial reporting is effective based on those*  
15 *criteria.*

16  
17 Our management's assessment of the effectiveness of internal control  
18 over financial reporting as of December 31, 2004, has been audited by  
19 KPMG LLP, the independent registered public accounting firm who  
20 also audited our consolidated financial statements. KPMG's report on  
21 management's assessment of our internal control over financial  
22 reporting appears on page F-3 hereof.

23  
24 (c) Changes in Internal Control Over Financial Reporting.

25 During 2004, we initiated the implementation of a new integrated Loan  
26 Origination System (the "new LOS") for our wholesale production  
27 units and related support units. As of December 31, 2004, all of our  
28 wholesale production and related support units were using the new

1 LOS. The implementation of this new LOS required changes to our  
2 system of internal control over financial reporting. We reviewed each  
3 system as it was being implemented and the internal control affected by  
4 the implementation. *We made appropriate changes to the affected*  
5 *internal controls as we implemented the new systems. We believe that*  
6 *the controls as modified are appropriate and functioning effectively.*  
7

8 During the fourth quarter of 2004, we changed our capital structure in  
9 order to enable us to qualify as a REIT for U.S. federal income tax  
10 purposes. The conversion to a REIT has involved changes in internal  
11 controls; accordingly, these changes required changes to our system of  
12 internal control over financial reporting. *We made appropriate changes*  
13 *to the affected internal controls and believe that the controls as*  
14 *modified are appropriate and functioning effectively.*  
15

16 Other than the matters set forth in the two immediately preceding  
17 paragraphs, *there was no change in our internal control over financial*  
18 *reporting during our quarter ended December 31, 2004* that materially  
19 affected, or is reasonably likely to materially affect, our internal control  
20 over financial reporting.

21 53. The 2004 Form 10-K incorporated by reference into the Company's  
22 June 2005 Series A Preferred Share Offering Prospectus also contained  
23 Certifications by Defendants Cole, Gotschall, Morrice and Dodge that attested to the  
24 purported accuracy and completeness of the Company's financial and operational  
25 reports, as follows:

- 26 1. *I have reviewed this annual report on Form 10-K of New*  
27 *Century Financial Corporation;*
- 28 2. *Based on my knowledge, this report does not contain any untrue*